Supreme Court, U.S.
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No. 99-1595

IN THE

Supreme Court of the United States

FRANKLIN FELDMAN,

Petitioner,

v.

UNITED MERCHANTS AND MANUFACTURERS, INC., REUNITED HOLDINGS, INC., SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, MICHAEL L. COOK, GEORGE A. ZIMMERMAN, KENNETH J. BIALKIN, AND UZI RUSKIN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Petitioner omitted United Merchants and Manufacturers, Inc. and Reunited Holdings, Inc. fka Victoria Creations, Inc. (collectively, the "Debtors"), from his statement of the parties to the proceedings below.

Respondent United Merchants and Manufacturers, Inc. ("UM&M") has no parent corporations and no publicly held company owns 10% or more of UM&M stock.

Respondent Reunited Holdings, Inc. ("RHI") is a subsidiary of UM&M and other than UM&M, no publicly held company owns 10% or more of RHI's stock.

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BASIS OF JURISDICTION

The United States Court of Appeals for the Second Circuit denied the Petitioner's appeal on September 22, 1999, and on November 30, 1999, denied the Petitioner's "Suggestion for Rehearing En Banc."

This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Issue Number 1

11 U.S.C. § 328(c):

> Except as provided in section 327(c), 327(e), or 1107((b) of this title, the court may deny allowance of compensation for services and reimbursement of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

Issue Number 2

11 U.S.C. §§ 503(b)(3)(D), (4):

> After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by-(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making substantial contribution in a case under chapter 9 or 11 of this title . . . (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

STATEMENT OF THE CASE

Venue — Southern District of New York. On February 22, 1996 (the "Petition Date"), the Debtors commenced these cases by filing petitions for relief in the bankruptcy court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code" or "Code"). RHI, a subsidiary of

UM&M with its principal place of business in New York, AA[1] 308-09 (¶ 4), filed its petition first. UM&M, a Delaware corporation, then filed its petition. AA 323 (¶ 2).

Feldman's Unsuccessful Trustee Motion. Feldman, a UM&M shareholder and former attorney for UM&M, moved for the appointment of a trustee or an examiner in April, 1996, alleging that Ruskin, then UM&M's chief executive, failed to pay on his guaranty of the purchase of UM&M stock by Monzoral N.V.; that the board of directors acted improperly regarding the guaranty; that the existence of the guaranty had never been disclosed to shareholders; and that UM&M refused to sue on the guaranty. FA[2] 17-23. The court denied the motion on May 17, 1996, FA 170. Feldman never appealed from the denial of his motion.

Feldman's Unsuccessful Objection to Confirmation of the Debtors' Reorganization Plans. The Debtors filed their reorganization plans with disclosure statements (the "Disclosure Statements") on January 21, 1997. By order dated February 25, 1997, the court approved the amended Disclosure Statements over Feldman's objection, and scheduled a confirmation hearing on the Debtors' proposed reorganization plans (the "Plans") for April 9, 1997.

Feldman renewed his motion for the appointment of a trustee a year later, on March 24, 1997, alleging that Skadden had a conflict of interest due to Bialkin's ownership of UM&M stock (which had virtually no value) and prior

1. "AA" refers to Respondents-Appellees' appendix in the Second Circuit Court of Appeals.

2. "FA" refers to Petitioner-Feldman's appendix in the Second Circuit Court of Appeals.

representation of Ruskin; UM&M's interests were not properly represented; claims against the UM&M board should be prosecuted; and, based on the potential recovery from such litigation, the reorganization plan for UM&M should not be confirmed. FA 241-47. The court treated Feldman's renewed motion as an objection to confirmation of the Plans, with Feldman's apparent consent. FA 240 at 235. Feldman was the only objecting party to appear.[3]

After a full trial on April 9, 1997, the court overruled Feldman's objections and confirmed the Plans. AA 603-669. Neither Feldman nor any other party appealed from the court's two confirmation orders, which are now final and no longer subject to review.

Feldman's Fee Motion. Feldman filed a request for compensation under 11 U.S.C. §§ 503(b)(3), (4) on March 26, 1997, FA 276-92, seeking an award of $350,810 ($349,575 in fees and $1,235 in expenses) (the "Fee Motion"). The Debtors objected on May 7, 1997 to Feldman's Fee Motion, FA 293-306, as did the official committee of unsecured creditors ("Committee") and the United States Trustee ("U.S. Trustee"). AA 1072-73. At the hearing held on June 10, 1997, the bankruptcy court denied Feldman's Fee Motion, finding that he had made no contribution to the case, and entered an order on June 18, 1997. FA 307.

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3. The objections of the United States Trustee and the IRS were resolved prior to the confirmation hearing. AA 773. In addition, six former UM&M shareholders sent the court letters objecting to confirmation due to the Plan's cancellation of their stock, although the insolvency of UM&M had been undisputed at all times. AA 742.

Feldman's Sanctions Motion. Feldman also moved on May 16, 1997, for sanctions (the "Sanctions Motion") against Skadden, three of its partners, and Uzi Ruskin, the Debtors' chief executive officer. FA 337-53. Because he had failed to appeal from the April 10, 1997 order confirming the UM&M reorganization plan, Feldman also asked the court to revoke its April 10, 1997 confirmation order. *Id.* The Debtors, Ruskin and Skadden responded to Feldman's motion on June 6, 1997. AA 177.

The Final Fee Hearing. The hearing on all professional fee applications was also held on June 10, 1997. The bankruptcy court reduced Skadden's requested fees of $1.4 million by $225,000 because of the firm's inadvertent, belated disclosure of a Skadden partner's ownership of a *de minimis* amount (less than one-fifth of 1%, FA 116 ¶ 4) of worthless UM&M stock (FA 119 ¶ 5; FA 121-22 ¶¶ 2,3).[4]

No party, including Feldman, had ever moved to disqualify Skadden as counsel to the Debtors, either before or after the disclosure of Bialkin's ownership of UM&M stock in May, 1996. FA 116 (¶ 4). Based on the belated disclosure, the U.S. Trustee filed a limited objection to Skadden's first interim fee application in September, 1996. FA 214-25. An evidentiary hearing was held on March 20 (FA 239), and April 1, 1997 (FA 240), in which Bialkin and two other witnesses testified.

The bankruptcy court found no conflict of interest on Skadden's part, but reduced Skadden's fee award by the sum

4. The Skadden partner, Bialkin, had returned a completed firm-wide questionnaire with the appropriate disclosure of his stock ownership approximately 2½ months late. FA 239 at 109; FA 240 at 161-64. At the time, Skadden had approximately 1,100 attorneys in 9 domestic and 12 international offices. FA 116 n.1.

of $225,000 solely because of the firm's belated disclosure, which the U.S. Trustee called an "oversight". FA 240 at 248.

REASONS FOR DENYING THE WRIT

I. The Record Does Not Raise the Questions Presented by Petitioner.

As to Issue No. 1, there were no "serious conflicts of interest" on Skadden's part. The bankruptcy court has held that, notwithstanding Petitioner's other alleged conflicts, Bialkin's ownership of UM&M stock was the sole disqualifying conflict. Pet.App.19. It is undisputed that this conflict was anything but a serious one, as Bialkin owned less than one-fifth of 1% of worthless UM&M stock, which was eventually donated to charity. Pet.App.15.

As to Issue No. 2, the bankruptcy court held that the Petitioner not only failed to have made a "substantial contribution," but in fact harmed the reorganization process and the estates.

II. Legal Grounds for Denial of Writ.

Issue No. 1.

(i) Code § 328(c) is clear and unambiguous in stating that the bankruptcy court "*may* deny allowance of compensation" to interested counsel; the statute says "may," not "shall." Thus, the lower courts were correct in affirming the bankruptcy judge's discretion to deny Skadden a portion, rather than its entire fee.

(ii) There is no disagreement among the Circuit Courts of Appeals with respect to the application of section 328(c).

(iii) Even the denial of only a portion of Skadden's fee was unjustified because Skadden qualified as disinterested counsel.

Issue No. 2.

The bankruptcy court held that the Petitioner did not make a "substantial contribution" to the Debtors' cases. This factual determination is clearly correct.

ARGUMENT

I.

SKADDEN'S FEES

A. Section 328(c)

(i) *Section 328(c) is Unambiguous.*

Section 328(c) allows bankruptcy courts discretion in denying compensation. The statute provides that the court "may" deny compensation, rather than that the court "shall" or "must" deny compensation. As this Court stressed repeatedly, statutes say what they mean, and mean what they say. When the statute is clear and unambiguous on its face, judicial inquiry is at end. The literal words of the statute should be respected. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then . . . 'judicial inquiry is complete.' ") (interpreting statute granting

jurisdiction of bankruptcy appeals) (citations omitted); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) ("[W]here, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.' ") (interpreting Code § 506(b)) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)); *accord Union Bank v. Wolas*, 502 U.S. 151, 157-58 (1991) (enforcing the plain meaning of section 547(c)(2) of the Bankruptcy Code); *Toibb v. Radloff*, 501 U.S. 157, 162 (1991) (enforcing the plain meaning of section 109 of the Bankruptcy Code).

The ordinary use of the term "may" is clearly permissive, *Farmers' & Merchants' Bank v. Federal Reserve Bank*, 262 U.S. 649, 662-63 (1923); *Rasbury v. IRS* (*In re Rasbury*), 24 F.3d 159, 166 (11th Cir. 1994); *International Cablevision, Inc. v. Sykes*, 997 F.2d 998, 1005 (2d Cir. 1993), and that is especially so when the statute under consideration maintains the distinction between "may" and "shall." *Farmers' & Merchants'*, 262 U.S. at 663. The Bankruptcy Code clearly maintains this distinction. *Compare*, 11 U.S.C. § 321(a) (may); § 326(a), (d) (may); § 327(a), (b), (d), (e) (may); § 328(a), (b), (c) (may); § 330(a)(1) (may) *with* § 321(b) (may not); § 326(b), (c) (may not); § 327(f) (may not); § 329(a) (shall); § 330(a)(4) (shall not); § 330(a)(5), (6) (shall).

(ii) *All Circuits Courts Agree on the Proper Interpretation of Section 328(c).*

Like the Second Circuit below, all Circuit Courts of Appeals that have addressed the proper application of section 328(c) agree that the section allows bankruptcy courts discretion to deny all or a portion of the requested fees. Petitioner fails to cite a single Circuit Court of Appeals

decision construing section 328(c) as mandatory rather than permissive. *Kravit, Gass & Weber v. Michel* (*In re Crivello*), 134 F.3d 831, 837-39 (7th Cir. 1998) ("Being on the front line, a bankruptcy judge is 'in the best position to gauge the ongoing interplay of factors and to make the delicate judgment calls which such a decision entails'. Section 328(c) requires this discretion in deciding whether the court should deny in whole or in part the fee request of an erroneously employed professional."); *Law Offices of Nicholas A. Franke v. Tiffany* (*In re Lewis*), 113 F.3d 1040, 1043 (9th Cir. 1997) (attorney's fee award reviewed for abuse of discretion);[5] *Electro-Wire Prods., Inc. v. Sirote & Permutt, P.C.* (*In re Prince*), 40 F.3d 356, 360 (11th Cir. 1994) ("The permissive nature of the language in § 328(c) is clear."); *Gray v. English*, 30 F.3d 1319, 1324 (10th Cir. 1994) ("The permissive 'may deny' language does not require the court to deny legal fees or disgorge previously paid fees in all cases."); *Rome v. Braunstein*, 19 F.3d 54, 62 (1st Cir. 1994) ("Like other courts which have considered the issue, however, we adopt no per se or brightline rule invariably requiring denial of all compensation under section 328(c).").

Michel v. Federated Dep't Stores, Inc. (*In re Federated Dep't Stores, Inc.*), 44 F.3d 1310 (6th Cir. 1995) did not deal with the proper interpretation of section 328(c), and, therefore, does not establish a conflict among the circuits. Unlike the case at hand, in *Federated*, the United States Trustee opposed the professional's retention at the bankruptcy court level, and appealed the retention order to

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5. *Accord Hill & Sandford v. Mirzai* (In re Mirzai), 203 F.3d 832 (9th Cir. 1999) (Table), 1999 WL 1073820 at *2 ("We grant broad discretion to bankruptcy court determinations to deny or award fees where a debtor's attorney has failed to disclose material facts."). Petitioner filed with the Court copies of this unpublished disposition.

the district court and to the Circuit Court of Appeals. 44 F.3d at 1312. After the Sixth Circuit reversed the order of retention, it held that a professional who was not retained should be denied compensation.[6] *See* 44 F.3d at 1319 ("Our authority to award fees is circumscribed by 11 U.S.C. § 330(a), which provides that 'the court may award [reasonable fees and expenses] . . . to a person employed under [§] 327. . . .' We have already decided that Lehman Brothers' appointment was invalid and, therefore, Lehman Brothers was not a person employed under § 327(a)."). Because Lehman acted with no valid order of retention, the Sixth Circuit did not have to reach the proper interpretation of section 328(c). In the case at hand, however, Skadden's retention order was never appealed, and no party, including the Petitioner, has moved to disqualify Skadden as Debtors' counsel. Thus, unlike *Federated*, Skadden's retention order is final and not subject to appeal.

(iii) *Legislative History Supports the Respondents.*

"[E]ven if we could resort to legislative history it favors the permissive construction. *See* Sen. Rep. No. 95-989, 1978 U.S. Code Cong. & Admin. News 5787, 5825 ('Subsection (c) [of § 328] permits the court to deny compensation. . . if the professional person is not disinterested.')." *Gray*, 30 F.3d at 1323-24.

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6. Even the *Federated* court used its equitable powers to award Lehman Brothers a portion of its requested compensation. *See* 44 F.3d at 1320.

B. Skadden Qualified As Disinterested Counsel

(i) *Bialkin's De Minimis Stock Ownership Was Not a Conflict.*

Bialkin's ownership of 1/5 of 1% of worthless UM&M stock does not render Skadden interested.[7] A single attorney's disqualifying interest, does not disqualify the entire firm. *United States Trustee v. S.S. Retail Stores Corp.* (*In re S.S. Retail Stores Corp.*), 211 B.R. 699, 703-04 (Bankr. 9th Cir. 1997) ("Congress had the opportunity to include this blanket disqualification provision in section 327 and did not do so. . . . No vicarious disqualification is provided for in the applicable sections of the Bankruptcy Code, despite the legislative opportunity to include [it]."); *Vergos v. Timber Creek, Inc.*, 200 B.R. 624, 629-30 (W.D. Tenn. 1996); *Capen Wholesale, Inc. v. Michel* (*In re Capen Wholesale, Inc.*), 184 B.R. 547, 550 (N.D. Ill. 1995); *In re Creative Restaurant Management, Inc.*, 139 B.R. 902, 911-14 (Bankr. W.D. Mo. 1992).

(ii) *Bialkin's and Skadden's Representation of Ruskin in 1980 and 1989 Does not Disqualify Skadden.*

As a matter of federal bankruptcy law, Skadden's or Bialkin's prior representation of Ruskin in matters completely unrelated to the bankruptcy cases does not disqualify Skadden from representing the Debtors. *Bank Brussels Lambert v. Coan* (*In re Arochem Corp.*), 176 F.3d 610, 624 (2d Cir. 1999) ("The Bankruptcy Code thus

7. The Bankruptcy Court disagreed with Skadden on this point, and Skadden did not appeal. The issue is addressed herein, however, to allow the Court to judge in context the severity of the sanction imposed on Skadden.

recognizes a distinction between past and present representation. Because Caddell no longer 'represents' Wells, Caddell does not represent any of Wells' interests, whether or not any of those interests might be adverse to the estate."). Skadden's prior limited representation of Ruskin in 1989 and Bialkin's representation of Ruskin in 1980, never created a conflict or an adverse interest in the later 1996 bankruptcy case. *St. Angelo v. Sidco, Inc.* (*In re Sidco, Inc.*), 173 B.R. 194, 195-96 (E.D. Cal. 1994) (attorney properly retained although he previously represented a person who was the secretary, 90% shareholder, guarantor, co-debtor and unsecured creditor of the debtor).

This result does not change when applying non-bankruptcy rules. A law firm may represent one client in a litigation[8] against a former client when the subject matter of the current and *former* representation are not substantially related. *Allegaert v. Perot*, 565 F.2d 246, 248 n.3 (2d Cir. 1977); *Lightning Park, Inc. v. Wise Lerman & Katz, P.C.*, 609 N.Y.S.2d 904, 906 (1st Dep't 1994). Courts inquire as to whether there is a "substantial relationship" between the two matters. *Glueck v. Jonathan Logan, Inc.*, 653 F.2d 746, 749 (2d Cir. 1981); *Lightning Park*, 609 N.Y.S.2d at 906.

There was no relationship between the subject matter of Bialkin's (in 1980) and Skadden's (in 1989) prior representation of Ruskin and Skadden's later representation of UM&M in the reorganization case during 1996-97. In or around 1980, Bialkin, while a partner at another law firm, represented Ruskin with a group of investors in an attempt to acquire control of UM&M. *See* FA 116 (¶ 5). In addition,

8. UM&M was *not* litigating against Ruskin, but because Feldman had asserted a conflict, we assume, *arguendo*, that the higher standard applies here.

as previously disclosed by Skadden to the Delaware bankruptcy court on November 2, 1990, FA 126-132, Skadden, under the lead of Bialkin, had represented an investor group, including Ruskin, in their unsuccessful bid to acquire shares of UM&M in 1989. Skadden's retention as UM&M's bankruptcy counsel in the Delaware bankruptcy case was approved. Skadden also represented UM&M, Ruskin and at least one other person in December 1989, for the limited purpose of negotiating a release of certain claims made by two former UM&M shareholders. FA 129-130 (¶¶ 11-12). These three prior unrelated representations had long been a matter of public record, and had been promptly disclosed again by Skadden to the bankruptcy court, when discovered by Skadden's bankruptcy lawyers, in May and July 1996. FA 116(¶ 5); FA 124(¶ 4); AA 1095. Feldman complained, FA 174-85, but neither he nor anybody else sought Skadden's disqualification.

"Courts routinely find no substantial relationship when the prior representation concerned subjects unconnected to the case before the court." *In re Wingspread Corp.*, 152 B.R. 861, 865 (Bankr. S.D.N.Y. 1993) (citing Gary T. Lowenthal, *Successive Representation By Criminal Lawyers*, 93 Yale L.J. 1, 17 (1983)). Nor has Feldman ever shown that an unrelated matter has any "patently clear," "identical" or "essentially the same" relationship to the pending representation. *Lightning Park*, 609 N.Y.S.2d at 906; *Bennett Silvershein Assocs. v. Furman*, 776 F. Supp. 800, 803 (S.D.N.Y. 1991), citing *Government of India v. Cook Indus., Inc.*, 569 F.2d 737, 740 (2d Cir. 1978). *Accord In re Sullivan*, No. 91-5501, 1992 WL 68613, at *6 (E.D. Pa. Mar. 31, 1992) (affirmed bankruptcy court's denial of disqualification motion when trustee's counsel previously represented adverse party defendant; "representation . . . ended more than

four years prior to" bankruptcy; representation was "sporadic and related to isolated matters and . . . ended in 1989. . . . [S]uch relation is sufficiently remote . . . .").

C. Petitioner's Factual Misstatements

Pursuant to Supreme Court Rule 15.2, respondents bring to the Court's attention the following misstatements made by the Petitioner in his petition with respect to Issue No. 1: (1) contrary to Petitioner's assertion that there is a conflict among the Circuit Courts of Appeals, *see* Petition at 9, no such conflict exists; (2) there was no evidence in any of the courts below that Ruskin owned a "sham corporation", *see* Petition at 5; (3) Petitioner mischaracterizes Ruskin's testimony and the transaction involving the purchase of UM&M's stock. *See* Petition at 5, 8. Ruskin testified, and UM&M's filings with the Securities and Exchange Commission confirm, that the purchaser's debt was secured by the stock purchased, that Mr. Ruskin's guaranty was for a limited amount and did not cover the entire obligation under the purchase agreement. *See* AA 79-80; AA 89; AA 812; (4) contrary to Petitioner's assertion, *see* Petition at 8, UM&M's audited financial statements did not state that Ruskin owed UM&M $6 million for the purchase of UM&M stock; (5) Mr. Gelber's quote, *see* Petition at 5, is taken out of context. Mr. Gelber testified explicitly: "We represent the corporation. We felt we had no conflict in representing the corporation," and "I do not represent Mr. Ruskin. I represent the corporation." *See* FA 239 at 119-20; (6) contrary to Petitioner's allegation, *see* Petition at 5, neither Skadden nor Bialkin represented Ruskin at any time after 1989. *See* FA 239 at 59-60; FA 240 at 203, 205-06; AA 892-93; (7) the suggestion that Cook deliberately delayed disclosure, *see* Petition at 6, is absurd. The Bankruptcy Court explicitly

found that "the senior associate and partner in charge of the bankruptcy matter immediately took steps to make appropriate disclosures when such matters came to their attention." *See* AA 1095; (8) the Southern District of New York was an appropriate venue for these cases as the Bankruptcy Court explicitly held, *see* AA 1067 ("Mr. Ruskin's testimony shows that the filing of Victoria's petition in New York was a properly venued case and the filing was not fraud perpetrated on the Court."); (9) contrary to Petitioner's assertion that the Debtors failed to disclose the pendency of the Delaware bankruptcy case, *see* Petition at 7, 9, UM&M's bankruptcy petition clearly listed UM&M's Delaware bankruptcy case, *see* FA 95; (10) the conduct of Ruskin, Cook and Bialkin was anything but egregious, each has testified at length at the Bankruptcy Court, fully addressed all of the issues raised by the Petitioner, and was cross-examined by the Petitioner or his counsel. *See* FA 239 at 12-96 (Cook); FA 240 at 142-232 (Bialkin); AA 764-934 (Ruskin); AA 1055-1061 (Ruskin); (11) contrary to Petitioner's assertions, *see* Petition at 13, the Committee has advised the bankruptcy court that it commenced an investigation as to Feldman's alleged claims against Ruskin, that it intended to take an appropriate action if it determined that a viable cause of action exists, *see* AA 62-64 (¶ 22), and UM&M's Disclosure Statement explicitly states that the Committee conducted "its own internal review and analysis" relating to any alleged claims against Ruskin. *See* AA 375.

II.

SUBSTANTIAL CONTRIBUTION

Courts have developed fairly clear guidelines for substantial contribution awards. To show "substantial contribution," the applicant must confer a significant, demonstrable benefit upon the reorganization, in amount, value or worth. *Hall Fin. Group, Inc. v. DP Partners, L.P.* (*In re DP Partners, L.P.*), 106 F.3d 667, 673 (5th Cir. 1997); *Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 944 (3d Cir. 1994); *Haskins v. United States* (*In re Lister*), 846 F.2d 55, 57 (10th Cir. 1988) (same); *In re Best Prods. Co.*, 173 B.R. 862, 866 (Bankr. S.D.N.Y. 1994) (same).

The bankruptcy court found, based on the factual record before it, that "no such contribution was made by the applicants." AA 1073. In addition, the bankruptcy court found that "many of Mr. Feldman's efforts, such as the Trustee motion, caused an increase in the fees incurred by the Debtor's and the Committee's professionals. Some of Mr. Feldman's conduct was duplicative of the efforts of the Committee and the United States Trustee. . . ." *Id.* These factual findings are not clearly erroneous, were properly affirmed by the district court and the court of appeals, and therefore, present no issue for this Court's review. Fed. R. Civ. P. 52(a); *Anderson v. City of Bessemer*, 470 U.S. 564, 573-74 (1985).

CONCLUSION

Based on the foregoing, the respondents respectfully submit that the petition should be denied in all respects.

Respectfully submitted,

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